

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
FRANK D. O'NEILL)

Appearances:

For Appellant: Amos Bruce

For Respondent: Jean Harrison Ograd
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Frank D. O'Neill against a proposed assessment of additional personal income tax and penalty in the total amount of \$9,565.51 for the year 1976.

Appeal of Frank D. O'Neill

Appellant, a dentist, submitted a personal income tax form 540 for 1976 on which he provided no information regarding his income or deductions, indicating that he objected to each question on constitutional grounds. He attached a **statement** reciting various constitutional arguments in support of his refusal to provide pertinent information. He also stated that Federal Reserve notes were not lawful U.S. "dollars."

Respondent determined appellant's 1976 salary from his Form W-2. Other types of income, such as capital gains, rents, dividends, and interest were computed as the average of these items reported on his 1973, 1974, and 1975 returns. A proposed assessment was issued which included a delinquent filing penalty.

In addition to his "legal tender" and constitutional arguments, appellant asserts that he was not taxable in 1976 because he was subject to a religious vow of poverty.

We are precluded from determining the 'constitutional issues raised by appellant both by article III, section 3.5, of the California Constitution, which prohibits us from declaring the statutes involved unconstitutional or unenforceable, and by our well-established policy of abstention from deciding constitutional issues in appeals involving deficiency assessments. (Appeals of Fred R. Dauberger et al., Cal. St. Bd. of Equal., March 31, 1982.) Appellant's argument that Federal Reserve notes are not legal tender has frequently and summarily been held to be without merit. (See Appeals of Fred R. Dauberger, et al., supra, and cases cited therein.) In situations apparently similar to appellant's, we have rejected taxpayers' arguments that they were exempt from taxation because of their vows of poverty. (See, e.g., Appeal of Jack V. and Allene J. Offord, Cal. St. Bd. of Equal., June 23, 1981.) In any case, we must reject appellant's contention in the instant appeal because he has presented no evidence in support of **such** an exemption.

For the reasons stated above, we sustain respondent's action.

Appeal of Frank D. O'Neill

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Frank D. O'Neill against a proposed assessment of additional personal **income tax** and penalty in the total amount of **\$9,565.51** for the year **1976**, be and the same is hereby sustained.

Done at Sacramento, California, **this 29th** day of June , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Dronenburg and Mr. Nevins present.

William M. Bennett , Chairman
Ernest J. Dronenburg, Jr. , Member
-Richard Nevins , Member
-W. W. - , Member
- A - , Member
- , Member